IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR.

O R D E R

S.B. Criminal Misc. Petition No. 1548/2007
(Vijay Kumar & Anr. Vs. State of Rajasthan & Anr.)

Date of Order : 11/10/2007

PRESENT

HON'BLE MR. JUSTICE H.R. PANWAR

Mr. M.K.Garg, for the petitioners.
Mr. Ashok Upadhyay, public prosecutor for the State.
Mr. D.S.Garsana for the respondent No.2-first informant.

Petitioner No.2 Rajshree and her father respondent No.2 Trilok Chand are present in Court.

By the instant criminal misc. petition under Section 482 Cr.P.C., the petitioners seek quashing of FIR No. 234/2007 dated 25.9.2007 Police Station-Gangashahar, district Bikaner for the offence under Section 366 IPC.

I have heard learned counsel for the parties as also the parties present in Court. Perused the FIR.

The facts and circumstances giving rise to the instant petition are that the respondent No.2 Trilok Chand lodged the FIR noticed above, alleging therein that petitioner No.1 Vijay Kumar by deceitful means kidnapped his daughter Rajshree who

is petitioner No.2 herein. On this FIR, the investigation ensued. However, during pendency of the investigation, Rajshree daughter of respondent No.2 along with Vijay Kumar filed the instant petition seeking quashing of the FIR on the ground that petitioner No.2 Rajshree is major. She has placed on record her mark-sheet of Secondary Examination- 1996 issued by Board of Secondary Education, Rajasthan showing her date of birth to be 31.12.1980 and states that she is of 27 years of age and is major. She is Law Graduate. The petitioner No.1 has been known to her for last many years, therefore, she fell in love with him and ultimately she at her own went with the petitioner No.1 and decided to marry with the petitioner No.1. Accordingly, she approached the Arya Samaj Siyana, Tehsil, Kolayat, district Bikaner for getting the marriage solemnized. She also stated that she married to the petitioner No.1 way back on 09.3.2005. She has also placed on record the marriage certificate issued by Arya Samaj Siyana, Tehsil, Kolayat, district Bikaner dated 9.3.2005. On being asked, the petitioner No.2 categorically stated that she being major understands her well-being. She is a Law Graduate and married with the petitioner No.1 who is also a student of Law and suffered supplementary in one subject and likely to become a Law Graduate in near future, and decided to live together as husband and wife.

In view of the statement of the petitioner No.2, in my

view, there appears to be no essential ingredients for construing the offence under Section 366 IPC. The respondent No.2 through his counsel also submits that in view of the statement of the petitioner No.2 Rajshree, nothing survives in the FIR as she being a major and if she states that she has gone at her own, there can be no other evidence to construe the offence under Section 366 IPC.

Hon'ble Supreme Court in B.S.Joshi and Others Vs. State of Haryana and Another (2003) 4 SCC, 675 held that there is no doubt that the object of introducing Chapter XX-A containing Section 498-A in the Indian Penal Code was to prevent torture to a woman by her husband or by relatives of her husband. Section 498-A was added with a view to punishing a husband and his relatives who harass or torture the wife to coerce her or her relatives to satisfy unlawful demands of dowry. The hypertechnical view would be counterproductive and would act against interests of women and against the object for which this provision was added. There is every likelihood that non-exercise of inherent power to quash the proceedings to meet the ends of justice would prevent women from settling earlier. That is not the object of Chapter XX-A of the Indian Penal Code. The Apex Court further observed that the High Court, in exercise of its inherent powers can quash criminal proceedings or FIR or complaint and Section 320 Cr.P.C. does not limit or affect the

powers under Section 482 Cr.P.C.

Keeping in view the decision of Hon'ble Supreme Court in B.S.Joshi and Others Vs. State of Haryana and Another (supra) and the fact that since petitioner No.2 Rajshree has married to petitioner No.1 at her own and they have been living together as husband and wife in the same town i.e. Bikaner and wish to lead the peaceful merital life, in my view, to allow the FIR and any further proceeding therein to continue would be nothing but abuse of the process of the Court and therefore, to secure the ends of justice, I consider it just and proper to quash the FIR in quetion.

In the result, the criminal misc. petition is allowed. The FIR No.234/2007 dated 25.9.2007 Police Station-Gangashahar, district Bikaner for the offence under Section 366 IPC stands quashed.

(H.R.PANWAR), J.

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S.B.Cr. Misc. Stay Petition No. 1024/2007

In

S.B.Cr. Misc. Petition No.1548/07

Date of Order : 11/10/2007

HON'BLE MR JUSTICE H.R.PANWAR

Mr. M.K.Garg for the petitioners.

Mr. Ashok Upadhyay, P.P.

Mr. D.S.Garsana for the respondent No.2.

Since the criminal misc. petition itself has been allowed, the stay petition stands disposed of.

(H.R.PANWAR),J.

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